

Message Text

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PAGE 01 STATE 164383
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FM SECSTATE WASHDC

TO AMEMBASSY NAIROBI

CONFIDENTIAL STATE 164383

E.O. 11652: GDS

TAGS: MARR, SE

SUBJECT: CENSORSHIP OF FILMS OF USAF TRACKING STATION
FACILITY IN SEYCHELLES

REF: NAIROBI 9224

YOU HAVE ASKED FOR LEGAL GUIDANCE ON THE GOS POSITION CONCERNING THE CENSORSHIP OF RECREATIONAL FILMS AT THE USAF SATELLITE TRACKING STATION. UNFORTUNATELY, THE LEGAL ARGUMENTS ARE NOT VERY STRONG. ORDINARILY, THE LAW OF THE HOST COUNTRY IS THE APPLICABLE LAW, UNLESS OTHERWISE SPECIFIED BY AGREEMENT. (THERE IS NO RIGHT UNDER TRADITIONAL INTERNATIONAL LAW OR PRACTICE TO SOVEREIGN CONTROL OF A STATION OR BASE OF A NON-DIPLOMATIC NATURE ON THE TERRITORY OF A FOREIGN STATE. THUS, THE TERMS OF THE AGREEMENT GOVERN.) NEITHER THE AGREEMENT NOR THE LEASE CONTAIN PROVISIONS WHICH BEAR DIRECTLY ON THIS ISSUE. NEVERTHELESS, THE FOLLOWING TWO ARGUMENTS, BASED ON THE AGREEMENT AND THE LEASE, MAY BE MADE.

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PAGE 02 STATE 164383

1. IT IS IMPLICIT IN THE AGREEMENT THAT THE USG IS GRANTED THE REASONABLE AMOUNT OF CONTROL OVER THE STATION NECESSARY FOR EFFECTIVE OPERATION OF THE STATION. WHILE THE GOS HAS THE AUTHORITY UNDER PARAGRAPH 2 OF ARTICLE 4 TO EXERCISE

SOME CONTROL OVER THE ACCESS OF PERSONS UPON THE FACILITY, IT IS NOT SPECIFIED THAT THE GOS HAS AUTHORITY TO CONTROL

NORMAL ACTIVITIES CONDUCTED BY THE USG ON ITS LEASED FACILITIES. YOU COULD ARGUE THAT THE AGREEMENT GIVES THE USG THE RIGHT TO CONSIDER THE STATION PREMISES PRIVATE, NOT "PUBLIC" PROPERTY, WITHIN THE MEANING OF SEYCHELLES LAW.

2. IT IS PART OF A COMMON LAW LEASEHOLD INTEREST IN LAND, FOR WHICH CONSIDERATION IS GIVEN, THAT THE LESSEE HAS THE RIGHT TO CONDUCT ITS AFFAIRS AS IT WISHES ON THE PROPERTY, AS LONG AS ITS CONDUCT DOES NOT VIOLATE THE TERMS OF THE LEASE OR INTERFERE IN PROPERTY SURROUNDING THE LEASED PREMISES. VANCE

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